

CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 05/06/99

Agenda Item 2

TO: PLANNING COMMISSION

FROM: Arlynn J. Camire, Associate Planner

SUBJECT: Use Permit Application No. 99-160-04, Variance Application No. 99-180-03 and Referral of a Decision by the Director of Community and Economic Development/Planning Director to Refuse Endorsement of On-Sale of Alcoholic Beverages at a Bona Fide Restaurant and Off-Sale of Alcoholic Beverages at a Market. Endorsement is required by the State Department of Alcoholic Beverages Control - Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant), Dorothy Levin and Arthur Zemel Trustees et. al. (Owners) - Request off-sale of beer and wine at a 4,029-square-foot market, and a variance to sell off-sale beer and wine adjacent to another establishment that sells alcoholic beverages (500-foot separation required) and a request for the City to determine that the public convenience or necessity would be served by on- and off-sales of alcoholic beverages in an area determined to be over-concentrated with such establishments.

The project location is 603 "A" Street, on the southeast corner of "A" Street and Grand Street in the Central City - Commercial Subdistrict (CC-C).

RECOMMENDATION:

It is recommended that the Planning Commission deny the applications.

DISCUSSION

Setting

The property is within the Marks Historic District within the Downtown Hayward Redevelopment Area and is developed with a 4,029-square-foot market and restaurant. The balance of the site is a 40-stall parking lot that serves the business (Sec Plan).

The vacant property on the northwest corner of the intersection diagonally across "A" Street is scheduled to be developed with related uses. It is adjacent to single family homes located in the Neighborhood Commercial-Residential (CN-R) Zoning District. Property to the north across "A" Street is a parking lot also in the CN-R Zoning District. The Southern Pacific Railroad right-of-way and the elevated BART tracks are to the east. The property to the west

across Grand Street is in the CN-R Zoning District and is developed with a single-story commercial office building which houses the Alameda County Association for Retarded Citizens program. To the south, in the CC-C Zoning District, is the "The Hot Spot" bar that is an on-sale liquor establishment serving beer, wine and spirits (Attachment A).

Proposal

The applicant, Jorge L. Gonzalez, operates El Tapatio Carniceria and Taqueria. Mr. Gonzalez has requested to sell beer and wine at the market and in the restaurant. The restaurant meets Zoning Ordinance requirements for an on-sale liquor establishment in the Central City District and therefore does not require approval of a conditional use permit. A conditional use permit is required for all markets less than 10,000 square feet in area to operate as an off-sale liquor establishment. In addition, since the site abuts a property that contains a bar, which is classified as an on-sale liquor establishment, a variance from the 500-foot minimum separation requirement is necessary to sell off-sale beer and wine at the market.

In addition there is an over concentration of liquor establishments in the census tract wherein El Tapatio is located. There are currently 8 off-sale liquor establishments where 4 are allowed and 10 on-sale liquor establishments where 7 are allowed. The over concentration regulations are relatively new and statutorily prohibits the State Department of Alcoholic Beverage Control (ABC) to license a new on- and off-sales liquor establishment in this area unless the governing body determines that the public convenience or necessity would be served by an additional increase. The City Council has authorized the Planning Director to make this determination. In this instance, the Planning Director is of the opinion that the public convenience or necessity would not be served by sales of alcoholic beverages at subject location.

Police Department and Staff Concerns

The Police Department does not support the application to allow the market to become an off-sale liquor establishment. The reasons for their opposition are:

- There is an over-concentration in the census tract of establishments that sell alcoholic beverages, both on-sale and off-sale. Two on-sale liquor establishments are within two blocks and two off-sale liquor establishments are within three blocks (Attachment A);
- There is a high number of service calls related to public consumption of alcohol and public drunkenness in the Downtown; and
- There is a social services agency serving mentally challenged adults in the vicinity of Grand and "B" Streets within 100 feet of the site.

The Police Department believes that alcoholic beverages are readily available in the Downtown area and is of the opinion that the approval of an additional off-sales liquor establishment may increase the incidence of the public consumption of alcohol in the Downtown area. This would further compromise the safety of residents and visitors who frequent the Downtown area.

Staff is also concerned that the parking lot cannot be effectively monitored and is concerned that patrons will consume alcoholic beverages in the parking lot. Moreover, the windows are covered with signs and display racks are pushed against the windows making it difficult for the Police to see into the store.

Public Concerns

Staff has received two letters and one e-mail in opposition to the granting of the application requests. The concerns of Hayward Citizens for Responsible Liquor Outlets, COMMPRE and Ken Kremer owner of a nearby commercial property include:

- The 500-foot separation requirement is designed to prevent undue concentration of and undesirable impacts on the community. El Tapatio further impacts the census tract area which is currently over-impacted by off- and on-sales liquor establishments;
- Another off-sales liquor establishment would be contrary to the promotion of public safety;
- Several community organizations that serve families and children are located in adjacent neighborhoods;
- Potential to hinder leasing of new commercial project to be built at the intersection of "A" and Grand Streets; and
- The neighborhood streets are littered with empty alcoholic beverage containers left by people who consume alcohol in public (Attachments B, C and D).

History of the Business

The site is located at an entry to downtown and should be maintained in an orderly fashion. However, there has been a history of outdoor storage violations since the onset of business in March 1998. An inspection fee for failure to comply has been assessed. Mr. Gonzalez intends to construct a covered trash enclosure that is compatible with the design of the building and will submit revised plans for staff review and approval.

Signs

No sign permits have been issued for the business. However, the building has one small wall sign and a non-conforming pole sign located in a planter facing "A" Street. The pole sign, which is nonconforming, is required to be removed because the building had been vacant for more than six months prior to the onset of the subject business. Storefront windows are painted with business identification signs and merchandise advertisements in excess of the 25 percent maximum coverage requirement.

Staff has informed the owner and the applicant that the pole sign is required to be removed, that the sign area on the windows is to be reduced to 25 percent and that all wall signs require a sign permit (Attachment E).

General Plan, Downtown Plan, Neighborhood Plan and Redevelopment Plan

The property is on the outskirts of the Burbank Neighborhood Plan Area. This Plan, the Downtown Hayward Design Plan and the General Plan promote commercial uses that are compatible with adjacent residential uses and encourage compatible association of uses. However, the addition of an on- and off-sales liquor establishment, in staff's opinion, is not compatible with surrounding uses because the area is over concentrated with these establishments. In addition, it is a policy of the Neighborhood Plan to "eliminate eyesores". This property has had a history of outdoor storage of cardboard, display racks and graffiti.

The central goal of the Redevelopment plan is *to provide an improved physical, social and economic environment which will establish the area as a center of community activity, containing a viable mixture of commercial and residential development, open space, public and related uses*. The addition of another off-sale liquor establishment will further impact an area that has a sufficient number of locations to buy for off-premises.

Environmental Review:

The proposal is defined as a project under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines, however it qualifies for a Categorical Exemption under Section 15031 (Existing Facilities) Class 1 (Operation of a private structure) of the CEQA Guidelines.

Public Notice:

On April 23, 1999, a Notice of Public Hearing was mailed to every property owner, business and resident within 300 feet of the property as noted on the latest assessor's records and appropriate public agencies. Staff has received two letters and one e-mail in opposition (Attachments B, C and D.)

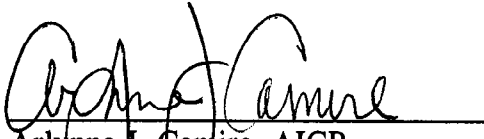
Conclusion:

Staff does not support the approval of the conditional use permit and variance. In addition, staff does not believe that the public convenience or necessity would be served by on- and off-sales of alcoholic beverages in this area, which has an over-concentration of such facilities as determined by the State.

Furthermore, the reasons cited above, including the applicant's disregard for City requirements and requests with regard to signs and outdoor storage, contributes to a lack of confidence that requirements associated with a use permit for off-sale alcoholic beverages would be met.

If the Planning Commission is inclined to approve the applications, staff should be directed to bring back findings for approval, conditions of approval, and a statement that the public convenience or necessity would be served with the sales of alcoholic beverages.

Prepared by:

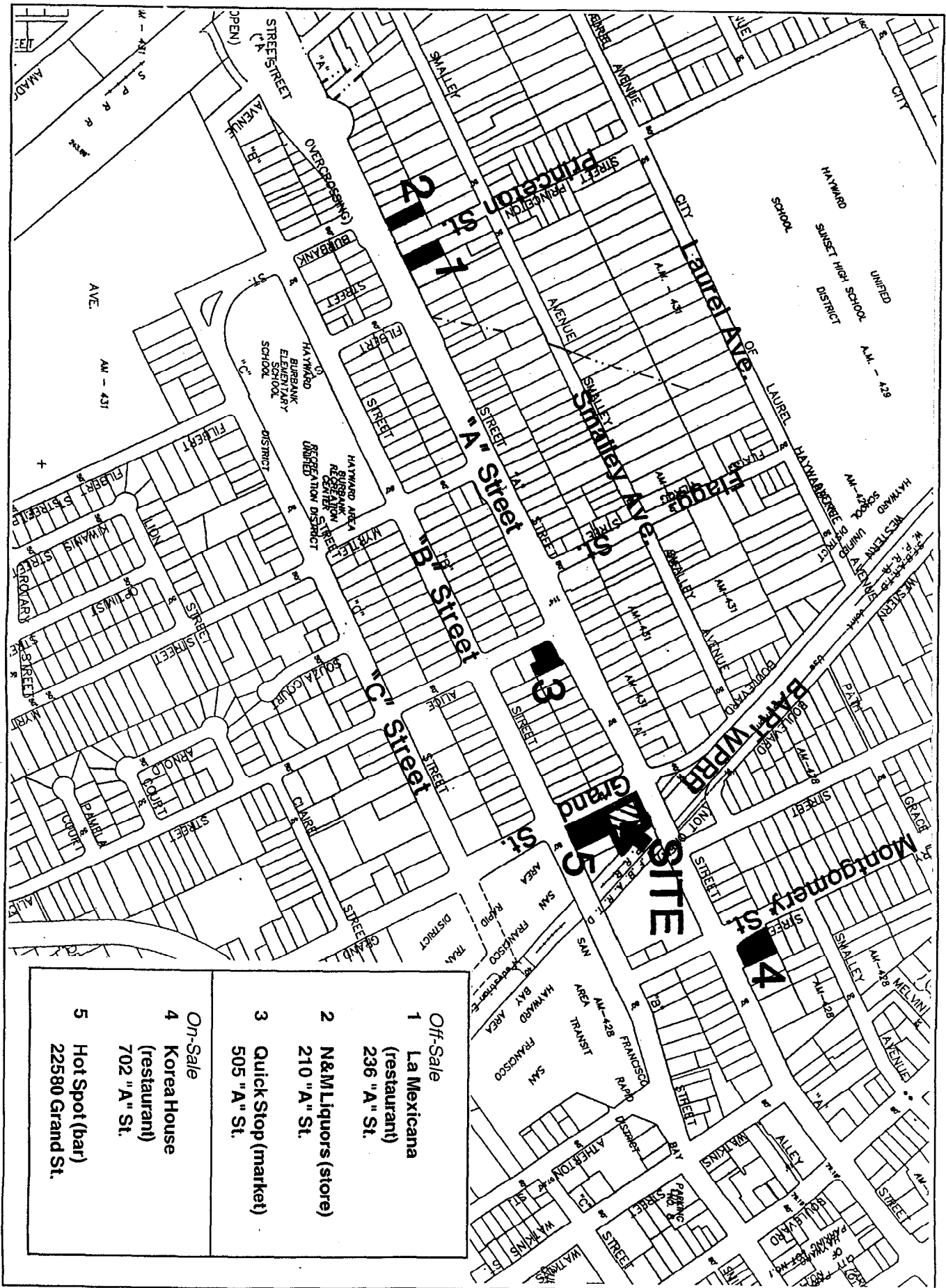

Arlynn J. Camire, AICP
Associate Planner

Recommended by:


Dyana Anderly, AICP
Development Review Services Administrator

Attachments:

- A. Area Map with Locations of Nearby Liquor Establishments
- B. Letter in Opposition from Hayward Citizens for Responsible Liquor Outlets dated April 26, 1999
- C. Letter in Opposition from COMMPRE dated April 26, 1999
- D. E-mail from Ken Kreme dated April 29, 1999
- E. Letter requesting Compliance to the Sign Ordinance dated April 26, 1999
- F. Findings for Denial of Use Permit
- G. Findings for Denial of Variance Plan



***Hayward Citizens
for Responsible Liquor Outlets
22652 Second Street Hayward, CA 94541
510-247-8207 phone 510-247-8210 fax***

April 26, 1999

Arlynn Camire, Associate Planner
Department of Community Economic Development
City of Hayward
777 B Street
Hayward, CA 94541-5007

Dear Ms. Camire,

I am writing on behalf of *Hayward Citizens for Responsible Liquor Outlets*, a coalition of Hayward citizens dedicated to reducing alcohol-related problems in our community. We request that the Planning Commission deny variance application 99-180-03 for El Tapatio Carniceria Taqueria.

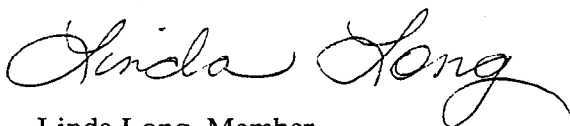
Several years ago, the City of Hayward adopted a Conditional Use Permit, which requires a minimum of 500 feet distance between on-sale and off-sale outlets. It also required this distance from libraries, public parks, schools and other places where children and families traditionally gather. As a supporter of one of the strongest CUP ordinances in the state, I felt confident that further overconcentration of alcohol outlets would be prevented, and public nuisances often created by alcohol outlets would be reduced.

El Tapatio is located in an area that already suffers from overconcentration. Located in census tract 4363, the California Department of Alcoholic Beverage Control (ABC) has authorized only seven on-sale licenses, and four off-sale licenses. Presently, there are ~~ten~~ active on-sale licenses, and ~~eight~~ active off-sale licenses. Also, there is at least one alcohol outlet within 500 feet of El Tapatio, making it ineligible for a CUP.

As a long time resident of the area near El Tapatio, I do not want to see another alcohol outlet allowed to operate in my neighborhood. My street is littered with empty alcohol containers. I watch daily as people with small, brown paper bags presumably filled with bottles of alcohol walk down our sidewalks.

Hayward Citizens for Responsible Liquor Outlets strongly urges the Planning Commission to deny the variance, and uphold the city ordinance.

Sincerely,



Linda Long, Member
Hayward Citizens for Responsible Liquor Outlets

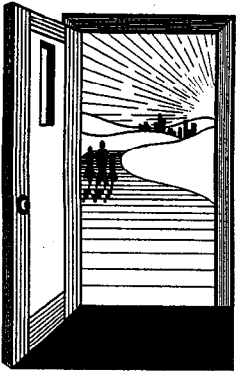
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April 22, 1999

DEVELOPMENT REVIEW SERVICES

COMMPRE



Arlyne Camire, Associate Planner
 Department of Community Economic Development
 City of Hayward
 777 B Street
 Hayward, CA 94541-5007

Subject: El Tapatio Use Permit Application #99-160-04
 Variance Application #99-180-03

Dear Ms. Camire:

This letter represents our request that the Planning Commission denies the above-referenced variance application.

The proposed variance is in direct conflict with Hayward's Conditional Use Permit that specifically establishes a minimum of 500 feet distance requirement between on-sale and off-sale outlets and from schools, libraries, public parks, playgrounds, recreational centers, day care centers and other similar uses.

This requirement was adopted to discourage problems resulting from the sale and use of alcohol and to promote public safety. The spirit of the ordinance also includes preventing the undue concentration of and undesirable impacts on the community stemming from establishments selling alcoholic beverages.

El Tapatio is located in a census tract (#4363) that is already overconcentrated with alcohol licenses. In accordance with California Alcoholic Beverage Control (ABC) laws **seven** on-sale liquor licenses are authorized for Census Tract #4363. However, there are **ten** active on-sale licenses. **Four** off-sale licenses are authorized for #4363, but there are **eight**.

Currently two establishments with liquor licenses are within two blocks of El Tapatio, with a bar located directly next door. We do not believe the addition of another off-sale license would be in the best interest of the community. A men's shelter and other community programs serving families and children are located in adjacent neighborhoods.

For all of these reasons we respectfully request that the Commissioners uphold the city ordinance and deny this variance.

Very truly yours,

Linda A. Pratt, M.A.
 Program Director

22652 Second Street
 Hayward, Ca. 94541
 (510)247-8207
 (510)247-8210 Fax



A program of
 Horizon Services, Inc.

From: <KREMERTEAM@aol.com>
To: COHD.CED(ArlynneC)
Date: Thu, Apr 29, 1999 7:17 AM
Subject: 603 A Street, Hayward

Good morning,

My name is Ken Kremer and I am now the sole owner of 590 A Street across the street from the subject property.

I have no problem with the request of on-site beer and wine sales with a restaurant.

I am admittedly opposed to off-site sales.

The approved strip center for my site is currently in for final plan check and could well start to be built in the next 90 days. The approval of off-site sales could hinder potential leasing due to concerns of loitering and other common problems associated with off-sale sites.

I can be reached at 510-881-700 should need to reach me.

Thank you,

Ken Kremer



CITY OF
HAYWARD

HEART OF THE BAY

April 26, 1999

Dorothy Levin and Arthur Zemel, et. al.
c/o Hamburger Property Management
800 Airport Boulevard, Suite 508
Burlingame, CA 94010

**Subject: 603 A Street, Hayward, California: El Tapatio Carniceria and Taqueria
Compliance to Sign Ordinance**

Dear Property Owners:

To be in compliance with the City of Hayward Sign Ordinance, the pole sign at your property is required to be removed because a period of more than 6 months lapsed between tenants. In December 1997, I informed your tenant, Jorge Gonzalez, that the sign is required to be removed to comply with the Sign Ordinance and a sign permit for additional signs would not be approved prior to the removal of the pole sign. However, Mr. Gonzalez was reluctant to comply with the request because he did not agree with the requirements of the Ordinance and felt that the pole sign is necessary to advertise his business. I have had several conversations with Mr. Gonzalez regarding the removal of the sign. Furthermore, a small wall sign has been erected without a sign permit. He is aware that a sign permit will not be issued for new signs prior to the removal of the pole sign.

In addition, the Ordinance allows for not more than 25 percent of the window area to be covered with signs. Currently, the amount of window signage exceeds that percentage. Therefore, I am requesting that signs be removed to bring the windows into compliance with the Ordinance.

I would appreciate your cooperation with this matter. Please call me at (510) 583-4206. Thank you.

Sincerely,

Arlynn J. Camire, AICP
Associate Planner

cc: Jorge Gonzalez, 603 A Street, Hayward, CA, 94541
Ken Jeffery, Community Preservation Inspector

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DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DEVELOPMENT REVIEW SERVICES

777 B STREET, HAYWARD, CA 94541-5007

TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

ATTACHMENT F

FINDINGS FOR DENIAL

Use Permit Application No. 99-160-04

Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant)

Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

Based on the staff report and the public hearing record:

1. That the Planning Commission find that the Categorical Exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflects the independent judgment of the Planning Commission based on the fact that the project conforms to Section 15301 of CEQA.
2. That a new on- and off-sales liquor establishment is not desirable for the public convenience or welfare since it has the potential to contribute to an increase of the public consumption of alcoholic beverages in an area that is impacted by liquor establishments;
3. That a new on- and off-sales liquor establishment may impair the character and integrity of the Central City - Commercial District (CC-C) in that the addition of a new liquor establishment is not in character with the surrounding development and uses, and will conflict with the established purpose of the CC-C District to promote commercial uses that are compatible to adjacent residential uses and encourage compatible association of uses;
4. That a new off-sale liquor establishment may be detrimental to the public health, safety, or general welfare as evidenced by the fact that additional opportunities to purchase alcoholic beverages to be consumed in public is not in conformance with the intent of the Hayward General Plan land use designation and existing zoning districts.
5. That a new off-sale liquor establishment is not in harmony with applicable City policies as well as the intent and purpose of the zoning district in that the use will not be compatible with adjacent commercial and residential activities.

ATTACHMENT G

FINDINGS FOR DENIAL

Variance No.99-180-03

Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant)

Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

1. The proposed project to is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Existing Structures.
2. That there are not special circumstances applicable to the property in that the subject property abuts an existing on-sales liquor establishment with a zero-property line distance separation and the Census Tract is impacted by an over concentration of liquor establishments.
3. That strict application of the Zoning Ordinance does not deprive such property of privileges enjoyed by other property in the vicinity under the same zoning classification in that the Zoning Ordinance reflects the State Department of Alcoholic Beverages Control regulations restricting the number of liquor establishments in each census tract.
4. That the variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and Central City Zoning District Commercial Subdistrict in which the property is situated in that other variances have not been approved which would allow less than a 500 foot separation between off-sales liquor establishments and on-sale liquor establishments.